



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAY 25 2012

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Douglas K. Cooper
Vice President, General Counsel and Secretary
Escanaba Paper Company
7100 County Road 426
Escanaba, Michigan 49829

Re: In the Matter of: Escanaba Paper Company
Docket No.

Dear Mr. Cooper:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves in the Matter of Escanaba Paper Company, Docket No. CAA-05-2012-0026. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY 25 2012.

Pursuant to paragraph 34 of the CAFO, Escanaba Paper Company, L.L.C. must pay the civil penalty within 30 days of date the CAFO is filed. Your check or electronic funds transfer must display the case name, case docket number CAA-05-2012-0026, and the billing document number 2751203A028.

Please direct any questions regarding this case to Timothy Thurlow, Associate Regional Counsel, 312-886-6623.

Sincerely,

A handwritten signature in cursive script that reads "Sara Breneman".

Sara Breneman
Chief
Air Enforcement and Compliance Assurance Section MI/WI

Enclosure

cc: Chris Hare, MDEQ
Ken Meade, WilmerHale

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. <u>CAA-05-2012-0026</u>
)	
Escanaba Paper Company,)	Proceeding to Assess a Civil Penalty
Escanaba, Michigan,)	Under Section 113(d) of the Clean Air Act
)	42 U.S.C. § 7413(d)
Respondent.)	
_____)	

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Acting Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Escanaba Paper Company (Escanaba), a Michigan corporation.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

NESHAP from the Pulp and Paper Industry (Subpart S)

9. On April 15, 1998, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for the Pulp and Paper Industry at 40 C.F.R. Part 63, Subpart S (63 Fed. Reg. 18617).

10. Subpart S, at 40 C.F.R. § 63.441, defines a “Low Volume, High Concentration or LVHC system” as the collection of equipment including the digester, turpentine recovery, evaporator, steam stripper systems, and any other equipment serving the same function as those previously listed.

11. Subpart S, at 40 C.F.R. § 63.443(a)(1)(i), requires that Hazardous Air Pollutant (HAP) emissions from each Low Volume High Concentration (LVHC) system be controlled.

12. Subpart S, at 40 C.F.R. § 63.443(c), requires equipment systems listed in paragraphs (a) and (b) of Section 63.443 to be enclosed and vented into a closed-vent system and routed to a control device that meets the requirements specified in paragraph (d) of Section 63.443. The enclosures and closed-vent system must meet the requirements specified in § 63.450.

13. Subpart S, at 40 C.F.R. § 63.450(a), requires each enclosure and closed-vent system specified in §§ 63.443(c), 63.444(b), and 63.445(b) for capturing and transporting vent

streams that contain HAP to meet the requirements specified in paragraphs (b) through (d) of Section 63.450.

14. Subpart S, at 40 C.F.R. § 63.450(d)(1), provides that, for each bypass line in the closed vent system that could divert vent streams to the atmosphere without meeting the emission limitations in §§ 63.443, 63.444, or 63.445, the owner or operator must install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that is capable of taking periodic readings as frequently as specified in § 63.454(e). The flow indicator must be installed in the bypass line in such a way as to indicate flow in the bypass line.

15. Subpart S, at 40 C.F.R. § 63.446(d)(2)(i), requires the fixed roof and all openings (e.g., access hatches, sampling ports, gauge wells) of a condensate tank used in the closed collection system to be designed and operated with no detectable leaks as indicated by an instrument reading of less than 500 parts per million above background, and vented into a closed-vent system that meets the requirements in § 63.450 and routed to a control device that meets the requirements in § 63.443(d).

16. Subpart S, at 40 C.F.R. § 63.450(c), requires that each component of the closed-vent system used to comply with §§ 63.443(c), 63.444(b), and 63.445(b) that is operated at positive pressure and located prior to a control device be designed for and operated with no detectable leaks as indicated by an instrument reading of less than 500 parts per million by volume above background, as measured by the procedures specified in § 63.457(d).

17. Subpart S, at 40 C.F.R. § 63.457(d)(i), requires the owner or operator to measure detectable leaks for closed-vent systems as specified in § 63.450 or for pulping process wastewater collection systems as specified in § 63.446(d)(2)(i) using Method 21, of part 60, appendix A.

18. Subpart S, at 40 C.F.R. § 63.445(b), requires the equipment at each bleaching stage of the bleaching systems listed in paragraph (a) of Section 63.445, where chlorinated compounds are introduced, to be enclosed and vented into a closed-vent system and routed to a control device that meets the requirements specified in paragraph (c) of Section 63.445. The enclosures and closed-vent system must meet the requirements specified in § 63.450.

19. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

20. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

21. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

22. Escanaba Paper Company is a wholly owned subsidiary of NewPage Corporation, headquartered in Miamisburg, Ohio.

23. On September 7, 2011, NewPage Corporation and certain of its subsidiaries and affiliates, including Escanaba Paper Company, commenced cases under chapter 11 of title 11.

of the United States Code that are pending before the Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

24. Escanaba Paper Company owns and operates a plant site located at 7100 County Road 426, Escanaba, Michigan (the facility) that uses the kraft pulping process to produce wood pulp.

25. The facility is a major source of Hazardous Air Pollutants (HAP), as defined in 40 C.F.R. § 63.2 of Subpart A.

26. Escanaba Paper Company’s operations are subject to the requirements of 40 C.F.R. Part 63, Subpart S.

27. From September 28, 2009 through October 1, 2009, EPA conducted a Clean Air Act investigation of the Escanaba Paper Company facility.

28. EPA issued a Finding of Violation (FOV) to NewPage Corporation on September 23, 2010, which stated that the Escanaba facility was in violation of Maximum Achievable Control Technology (MACT) standards that regulate HAP emissions from the Pulp and Paper Industry, 40 C.F.R. Part 63, Subpart S.

29. Specifically, Escanaba failed to:

- a. Install a calibrated flow indicator on 19 bypass lines as required by 40 C.F.R. § 63.450(d)(1).
- b. Control chlorinated HAP emissions from the bleach plant scrubber as required by 40 C.F.R. § 63.445(b).
- c. Conduct monitoring using Method 21 of 40 C.F.R. Part 60, Appendix A, on condensate collection tanks from 2007 through 2009 as required by 40 C.F.R. §§ 63.446(d)(2), 63.450(c) and 63.457(d)(i).

30. By December 20, 2010, Escanaba incorporated 42 valves into its Leak Detection and Repair program from condensate collection tanks that were previously not included.

31. By July 2011, Escanaba completed the installation of 19 calibrated flow indicators on bypass lines that previously had instrumentation available but no programmable control logic to determine if bypassing had occurred.

32. By December 20, 2010, Escanaba was including each digester's closure mechanism in Escanaba's weekly visual inspections.

Civil Penalty

33. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$205,417.

34. Within 30 days after the effective date of this CAFO, Respondent must pay a civil penalty of \$205,417 by cashier's check, certified check, electronic funds transfer, automated clearinghouse, or online payment.

(For checks sent by regular U.S. Postal Service mail) send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

(For checks sent by express mail) send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The check must include the case name, docket number of this CAFO, and the billing document number.

(For electronic funds transfer) make the electronic funds transfer, payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, include the case name, the docket number of this CAFO, and the billing document number.

(For Automated Clearinghouse (ACH) also known as REX or remittance express) make the ACH electronic funds transfer, payable to "Treasurer, United States of America," and send to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, include the case name, the docket number of this CAFO, and the billing document number.

(For on-line payment) make an on-line payment by going to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

35. Respondent must send a notice of payment that states the case name, the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Timothy Thurlow at the following addresses when it pays the penalty:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Timothy Thurlow (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

36. This civil penalty is not deductible for federal tax purposes.

37. If Respondent does not pay timely the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

38. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5).

This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

39. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

40. Respondent has demonstrated, and hereby certifies, that it is now in compliance with the requirements that formed the basis of the allegations in paragraph 29 of this CAFO.

41. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

42. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 39, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

43. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

44. This CAFO is subject to approval of the Bankruptcy Court. If this CAFO is not approved by the Bankruptcy Court, this CAFO, including but not limited to Paragraphs 7 and 8 herein, shall be of no force and effect and none of its provisions, including but not limited to Paragraphs 7 and 8 herein, will be deemed to prejudice or impair any of the parties' respective rights and remedies nor may it be used in any way against any of the parties hereto in any litigation or contested matter.

45. The terms of this CAFO bind Respondent, its successors, and assigns.

46. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

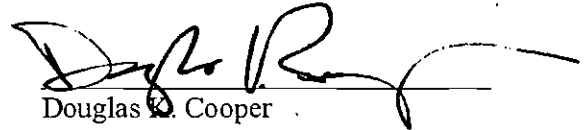
47. Each party agrees to bear its own costs and attorney's fees in this action.

48. This CAFO constitutes the entire agreement between the parties.

Escanaba Paper Company, Respondent

April 2, 2012

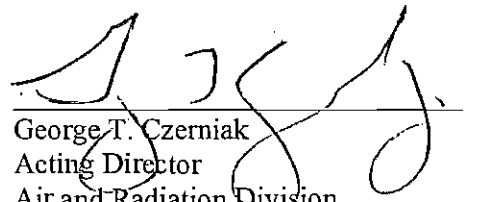
Date


Douglas W. Cooper
Vice President, General Counsel and
Secretary
Escanaba Paper Company

United States Environmental Protection Agency, Complainant

4/12/12

Date

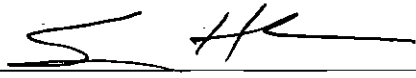

George T. Czerniak
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Escanaba Paper Company
Docket No. CAA-05-2012-0026

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

May 23, 2012
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of:

Escanaba Paper Company

Docket No. CAA-05-2012-0026

Certificate of Service

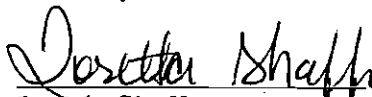
I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. [CAA-05-2012-0026], the second original to Respondent, addressed as follows:

Douglas K. Cooper
Vice President, General Counsel and Secretary
Escanaba Paper Company
7100 County Road 426
Escanaba, Michigan 49829

and that I mailed a correct copy by first class, United States mail, addressed as follows:

Honorable Judge Biro
United States Environmental Protection Agency
Office of Administrative Law Judges
Mailcode 1900L/Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

On this 29 day of May, 2012.


Loretta Shaffer

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7673 9863

RECEIVED
U.S. ENVIRONMENTAL PROTECTION AGENCY
MAY 31 2012